

Hearing Date: June 25, 2018
Time: 10:00 a.m.

ROSEN & ASSOCIATES, P.C.
Attorneys for the Debtor
747 Third Avenue
New York, NY 10017-2803
(212) 223-1100
Sanford P. Rosen

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

Re:

MICHAEL P. D'ALESSIO,

Case No.: 18-22552(RDD)

Debtor.

Chapter 7

-----X

**NOTICE OF MOTION TO REASSIGN CASE TO
THE BANKRUPTCY COURT IN NEW YORK COUNTY**

PLEASE TAKE NOTICE that upon the annexed motion dated May 23, 2018 (the “**Motion**”), of Michael P. D'Alessio, the above captioned debtor (the “**Debtor**”), by his counsel, Rosen & Associates, P.C., the undersigned will move at a hearing before the Honorable Robert D. Drain, United States Bankruptcy Judge, at the United States Bankruptcy Court, 300 Quarropas Street, White Plains, NY 10601-4140, on **June 25, 2018 at 10:00 a.m. (prevailing Eastern Time)**, or as soon thereafter as counsel can be heard, for entry of an order, pursuant to Rule 1073-1(e) of the Local Rules of this Court, reassigning this case to the Bankruptcy Court in New York County, and for such and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that responses or objections, if any, to the Motion shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York, shall set forth the grounds for such response or objection with specificity, and shall be filed with this Court electronically in accordance with General Order M-399 (General Order M-399 and the Procedures for Filing, Signing and Verification of Documents by Electronic Means can be found at <http://www.nysb.uscourts.gov>, the official website for the Bankruptcy Court), by registered users of this Court's filing system, and by all other parties in interest on a CD-ROM or other electronic media, preferably in PDF or any Windows-based word processing format, with a hard copy delivered directly to Judge Drain's chambers, and served in accordance with General Order M-399 upon (i) Rosen & Associates, P.C., counsel to the Debtor, 747 Third Avenue, New York, NY 10017-2803; (ii) the Office of the United States Trustee, 201 Varick Street, Suite 106, New York, NY 10014; and (iii) all parties requesting notice pursuant to Bankruptcy Rule 2002, **so as to be received not later than June 22, 2018.**

Dated: New York, New York
May 23, 2018

ROSEN & ASSOCIATES, P.C.
Attorneys for Michael P. D'Alessio

By: /s/ Sanford P. Rosen
Sanford P. Rosen

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New York, NY 10017-2803
(212) 223-1100

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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Re:

MICHAEL P. D'ALESSIO,

Case No.: 18-22552(RDD)

Debtor.

Chapter 7

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**DEBTOR'S MOTION TO REASSIGN CASE TO
THE BANKRUPTCY COURT IN NEW YORK COUNTY**

TO THE HONORABLE ROBERT D. DRAIN,
UNITED STATES BANKRUPTCY JUDGE:

Michael P. D'Alessio, the above captioned debtor (the “**Debtor**”), by his counsel, Rosen & Associates, P.C., as and for his motion (the “**Motion**”), pursuant to Rule 1073-1(e) of the Local Rules of this Court, for entry of an order reassigning this case to the Bankruptcy Court in New York County, respectfully represents as follows:

PROCEDURAL BACKGROUND

1. On April 17, 2018, Greater Hudson Bank, The Westchester Bank and BNB Bank (collectively, the “**Petitioning Creditors**”) filed against the Debtor an involuntary petition

(the “**Petition**”) under chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York.

2. On May 17, 2018, this Court, on the Debtor’s consent, entered an order for relief in this chapter 7 case.

3. Maryanne O’Toole, Esq. has been appointed interim trustee pursuant to section 701(a)(1) of the Bankruptcy Code and, upon information and belief, she has selected the firm of Lamonica Herbst & Maniscalco LLP to represent her as trustee.

JURISDICTION, VENUE AND STATUTORY PREDICATES

4. This Court has jurisdiction herein pursuant to 28 U.S.C. §§ 157(b)(1) and (2) and 1334.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1408.

6. The statutory predicate for the relief sought herein is section 105 of the Bankruptcy Code.

REQUEST FOR RELIEF

7. The Petition, a copy of which is annexed hereto as Exhibit “A,” alleges that the Debtor's address is 12 Water Street, Suite 204, White Plains, NY (the “**White Plains Address**”).

8. Upon information and belief, based upon such address, the Clerk of the Court assigned this case to the Bankruptcy Court in Westchester County pursuant to Rule 1073-1(a) of the Local Rules of this Court.

9. Although the Debtor did maintain a business office at the White Plains Address, he has not done so since March of 2018. And while the Debtor formerly resided in

Westchester County, he has resided at 265 East 66th Street, Apt. 28F, New York, NY since in or about September of 2017.

10. In view of the foregoing, the Debtor respectfully submits that his case has been improperly assigned to the Bankruptcy Court in Westchester County and should be reassigned to the Bankruptcy Court in New York County.

11. Section 1073-1(e) of this Court's Local Rules provides in pertinent part that "The Chief Judge shall supervise and rule upon all assignments and reassignments of cases."

12. In view of the foregoing, the Debtor respectfully requests that, subject to the provisions of section 1073-1(e) of this Court's Local Rules, this case be reassigned to the Bankruptcy Court in New York County.

NOTICE

13. The Debtor intends to give notice of this Motion by serving a copy of it, together with the prefixed notice of motion, upon (a) each of the Petitioning Creditors, (b) the interim chapter 7 trustee, in care of her counsel, (c) the Office of the United States Trustee for Region 2, and (d) all parties who or which have requested notice pursuant to Bankruptcy Rule 2002

NO PRIOR REQUEST

13. No prior request for the relief sought in this Motion has been made to this or any other Court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court: (i) enter an order granting the relief sought herein; and (ii) grant him such other and further relief as this Court may deem just and proper.

Dated: New York, New York
May 23, 2018

ROSEN & ASSOCIATES, P.C.
Attorneys for the Debtor

By: /s/ Sanford P. Rosen
Sanford P. Rosen

747 Third Avenue
New York, NY 10017

EXHIBIT A

United States Bankruptcy Court Southern District of New York		INVOLUNTARY PETITION
IN RE (Name of Debtor - If Individual: Last, First, Middle) D'Alessio, Michael P.		ALL OTHER NAMES used by debtor in the last 8 years (Include married, maiden, and trade names.)
Last four digits of Social-Security or other Individual's Tax-ID No./Complete EIN (If more than one, state all.) 3680		
STREET ADDRESS OF DEBTOR (No. and street, city, state, and zip code) 12 Water Street Suite 204 White Plains, NY 10601		MAILING ADDRESS OF DEBTOR (If different from street address)
<div style="border: 1px solid black; padding: 2px; display: inline-block;"> COUNTY OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS Westchester </div>		
LOCATION OF PRINCIPAL ASSETS OF BUSINESS DEBTOR (If different from previously listed addresses)		
CHAPTER OF BANKRUPTCY CODE UNDER WHICH PETITION IS FILED <input checked="" type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11		
INFORMATION REGARDING DEBTOR (Check applicable boxes)		
Nature of Debts (Check one box) Petitioners believe: <input type="checkbox"/> Debts are primarily consumer debts <input checked="" type="checkbox"/> Debts are primarily business debts	Type of Debtor (Form of Organization) <input checked="" type="checkbox"/> Individual (Includes Joint Debtor) <input type="checkbox"/> Corporation (Includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	Nature of Business (Check one box) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101(51)(B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other
VENUE <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in the District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> A bankruptcy case concerning debtor's affiliate, general partner or partnership is pending in this District.		FILING FEE (Check one box) <input checked="" type="checkbox"/> Full Filing Fee attached <input type="checkbox"/> Petitioner is a child support creditor or its representative, and the form specified in § 304(g) of the Bankruptcy Reform Act of 1994 is attached. <i>[If a child support creditor or its representative is a petitioner, and if the petitioner files the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.]</i>
PENDING BANKRUPTCY CASE FILED BY OR AGAINST ANY PARTNER OR AFFILIATE OF THIS DEBTOR (Report information for any additional cases on attached sheets.)		
Name of Debtor	Case Number	Date
Relationship	District	Judge
ALLEGATIONS (Check applicable boxes) 1. <input checked="" type="checkbox"/> Petitioner(s) are eligible to file this petition pursuant to 11 U.S.C. § 303(b). 2. <input checked="" type="checkbox"/> The debtor is a person against whom an order for relief may be entered under title 11 of the United States Code. 3.a. <input checked="" type="checkbox"/> The debtor is generally not paying such debtor's debts as they become due, unless such debts are the subject of a bona fide dispute as to liability or amount; <div style="text-align: center;">or</div> 3.b. <input type="checkbox"/> Within 120 days preceding the filing of this petition, a custodian, other than a trustee, receiver, or agent appointed or authorized to take charge of less than substantially all of the property of the debtor for the purpose of enforcing a lien against such property, was appointed or took possession.		COURT USE ONLY

Name of Debtor D'Alessio, Michael P.

Case No. _____

TRANSFER OF CLAIM

☐ Check this box if there has been a transfer of any claim against the debtor by or to any petitioner. Attach all documents evidencing the transfer and any statements that are required under Bankruptcy Rule 1003(a).

REQUEST FOR RELIEF

Petitioner(s) request that an order for relief be entered against the debtor under the chapter of title 11, United States Code, specified in this petition. If any petitioner is a foreign representative appointed in a foreign proceeding, a certified copy of the order of the court granting recognition is attached.

Petitioner(s) declare under penalty of perjury that the foregoing is true and correct according to the best of their knowledge, information, and belief.

X 
Signature of Petitioner or Representative (State title)

Greater Hudson Bank
Name of Petitioner 4/16/2018
Date Signed

Name & Mailing Address of Individual Signing in Representative Capacity
Greater Hudson Bank
Ed Lutz
715 Route 304
Bardonia, NY 10954

X _____
Signature of Petitioner or Representative (State title)

The Westchester Bank
Name of Petitioner _____
Date Signed

Name & Mailing Address of Individual Signing in Representative Capacity
The Westchester Bank
John M. Tolomer
12 Water Street
White Plains, NY 10601

X _____
Signature of Petitioner or Representative (State title)

BNB Bank
Name of Petitioner _____
Date Signed

Name & Mailing Address of Individual Signing in Representative Capacity
BNB Bank
Stuart M. Fieglmann
898 Veterans Memorial Highway
Suite 200
Hauppauge, NY 11788

X  4/17/18
Signature of Attorney Date

Cullen and Dykman LLP
Name of Attorney Firm (If any)
Bonnie L. Pollack, Esq.
100 Quentin Roosevelt Blvd.
Suite 402
Garden City, NY 11530
Address
Telephone No. 516-357-3700

X _____
Signature of Attorney Date

Emmet, Marvin & Martin, LLP
Name of Attorney Firm (If any)
Eric M. Reuben, Esq.
120 Broadway
32nd Floor
New York, NY 10271
Address
Telephone No. 212-238-3015

X _____
Signature of Attorney Date

Meyer, Suozzi, English & Klein PC
Name of Attorney Firm (If any)
Thomas Slome, Esq.
900 Stewart Avenue
Suite 300
Garden City, NY 11530
Address
Telephone No. 516-592-5772

PETITIONING CREDITORS

Name and Address of Petitioner	Nature of Claim	Amount of Claim
Greater Hudson Bank 715 Route 304 Bardonia, NY 10954	Line of Credit Note-does not include interest, fees and charges	2,250,000.00
The Westchester Bank 12 Water Street White Plains, NY 10601	Note-does not include interest, fees and charges	879,026.45
BNB Bank 898 Veterans Memorial Highway Suite 200 Hauppauge, NY 11788	Guaranty Claim-does not include interest, fees and charges	3,234,974.69
Note: If there are more than three petitioners, attach additional sheets with the statement under penalty of perjury, each petitioner's signature under the statement and the name of attorney and petitioning creditor information in the format above.		Total Amount of Petitioners' Claims 6,364,001.14

0 continuation sheets attached

Name of Debtor D'Alessio, Michael P.

Case No. _____

TRANSFER OF CLAIM

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Name of Petitioner _____ Date Signed _____

Name & Mailing Address of Individual Signing in Representative Capacity
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Ed Lutz
715 Route 304
Bardonia, NY 10954**

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Signature of Petitioner or Representative (State title)

The Westchester Bank

Name of Petitioner _____ Date Signed _____

Name & Mailing Address of Individual Signing in Representative Capacity
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John M. Tolomer
12 Water Street
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BNB Bank

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Stuart M. Fliegelman
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Name and Address of Petitioner The Westchester Bank 12 Water Street White Plains, NY 10601	Nature of Claim Note-does not include interest, fees and charges	Amount of Claim 879,026.45
Name and Address of Petitioner BNB Bank 898 Veterans Memorial Highway Suite 200 Hauppauge, NY 11788	Nature of Claim Guaranty Claim-does not include interest, fees and charges	Amount of Claim 3,234,974.69
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Name and Address of Petitioner BNB Bank 898 Veterans Memorial Highway Suite 200 Hauppauge, NY 11788	Nature of Claim Guaranty Claim-does not include interest, fees and charges	Amount of Claim 3,234,974.69
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